

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RHONDA SCOTT,

Plaintiff and Appellant,

v.

RUSSEL THOMPSON et al.,

Defendants and Respondents.

G041860

(Super. Ct. No. 07CC04217)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING; NO CHANGE IN
JUDGMENT

The petition for rehearing is DENIED. It is ordered that the opinion filed on May 26, 2010, is hereby modified as follows:

On page 9, at the end of the last paragraph, after the sentence ending “entry of judgment against her,” add as footnote 4 the following footnote:

⁴ Scott asserts in a petition for rehearing that she has a constitutional right to challenge Thompson’s paternity under the marital presumption, in order to displace him as the proper wrongful death plaintiff. By a separate order, we denied the petition. Scott’s attempt to imbue the case with a constitutional dimension fails because, as noted, the right to sue for another’s wrongful death is purely a creature of statute. (See, e.g., *People v. Giordano* (2007) 42 Cal.4th 644, 659.) There is no constitutional basis for Scott’s claim because the wrongful death cause of action is not an inherent right (*Pritchard v. Whitney Estate Co.* (1912) 164 Cal. 564, 568),

nor a vested right (*Krause v. Rarity* (1930) 210 Cal. 644, 653), but rather one within the discretion of the Legislature to grant, withhold, or restrict (*Norman v. Murphy* (1954) 124 Cal.App.2d 95, 99). As we have discussed, the Legislature in section 7630(a) has unambiguously foreclosed Scott's ability to establish standing as the proper wrongful death plaintiff here. Scott must take her disagreement with this policy choice to the Legislature, not the courts. (See, e.g., *Estate of Horman* (1971) 5 Cal.3d 62, 77 ["Courts do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature"]; *In re Marriage of Tavares* (2007) 151 Cal.App.4th 620, 628 ["The Legislature declares state public policy, not the courts"].)

The modification does not change the judgment.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.